APPENDIX A – OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DATED AND DECIDED FEBRUARY 4, 2002

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 01-30920

JEAN VALETTE BERTHELOT, Individually and as representative of all women, 35 years of age or older, beginning January 1, 1991, who were and are entitled to have Medicare, Medicaid, their Insurance Company, or HMO pay for their mammograms in compliance with the mammography guidelines in the Federal Medicare law, or in one of the more than 40 State-mandated-mammography laws,

Plaintiff - Appellant

versus

UNITED STATES OF AMERICA,

Defendant-Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana
01-CV-1854-K
Defendant - Appellee

Before DAVIS, BENAVIDES and STEWART, Circuit Judges:

PER CURIUM*

Jean Valette Berthelot appeals the district court's dismissal of her civil complaint. The district court relied in part upon *res judicata* to dismiss Berthelot's current lawsuit. An action is barred by the doctrine of *res judicata* if (1) the parties are identical or in privity with each other in both actions; (2) the first judgment was rendered by a court of competent jurisdiction; (3) the prior case ended with a final judgment on the merits; and (4) the same claim or cause of action is involved in both suits. Ellis v. Amex Life Ins. Co., 211 F.3d 935, 936 (5th Cir. 2000). "Cause of Action" is defined to include all claims that were or could have been brought in a prior action based on the same transaction. See Nilsen v. City of Moss Point, Miss., 701 F.2d 556, 560 (5th Cir. 1983)(en banc).

Berthelot had previously filed a federal lawsuit against the same defendants named here, alleging claims under the Racketeer Influenced and Corrupt Organizations Act. (RICO). These claims arose from the defendant's publication of purportedly illegal and contradictory guidelines for ordering mammograms. The lawsuit was dismissed because it was barred by the applicable limitations period. The current lawsuit, against the same defendants, challenges the defendant's continued publication of the purportedly illegal guidelines and requests declaratory and injunctive relief, along with monetary damages.

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.

On appeal, Berthelot asserts that the two cases do not involve the same claim or cause of action because the first lawsuit challenged the 1993 actions of the defendants, whereas the current lawsuit involves the 2001 continued publication of improper guidelines. This assertion is frivolous. The two federal lawsuits clearly arise out of a common nucleus of facts, and the current action is barred by *res judicata*. As Berthelot has not raised a meritorious issue on appeal, the appeal is frivolous and is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20(5th Cir. 1983); 5TH CIR. R. 42.2. Berthelot's motion to expedite the appeal is DENIED AS MOOT.

APPEAL DISMISSED; MOTION TO EXPEDITE DENIED AS MOOT.

APPENDIX B – JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA DATED AUGUST 1, 2001 AND ENTERED AUGUST 2, 2001

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JEAN VALETTE BERTHELOT	CIVIL ACTION
VERSUS	NUMBER: 01-1713
UNITED STATES OF AMERICA	SECTION: "C" 5

RULE TO SHOW CAUSE WHY THIS CASE SHOULD NOT BE DISMISSED AND WHY THE COURT SHOULD NOT IMPOSE SANCTIONS ON PLAINTIFF'S COUNSEL PURSUANT TO RULE 11(c) OF THE F.R.C.P. AND/OR USC 1927 Doc (7):

ARGUED; THE COURT ORDERS THIS ACTION DISMISSED.

IT IS FURTHER ORDERED THAT PLAINTIFF'S COUNSEL BE PROHIBITED FROM FILING ANY FURTHER SUITS IN THIS COURT ARISING FROM THESE FACTS AND CIRCUMSTANCES WITHOUT CLEARANCE FROM THIS DISTRICT JUDGE

FURTHER THE COURT FINDS THAT SANCTIONS SHOULD NOT BE IMPOSED AT THIS TIME ON PLAINTIFF'S COUNSEL

DATE OF ENTRY
AUG 2, 2001

APPENDIX C – ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DENYING REHEARING DATED APRIL 10, 2002

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 01-30920

JEAN VALETTE BERTHELOT, Individually and as representative of all women, 35 years of age or older, beginning January 1, 1991, who were and are entitled to have Medicare, Medicaid, their Insurance company, or HMO pay for their mammograms in compliance with the mammography guidelines in the Federal Medicare law, or in one of the more than 40 State-mandated-mammography laws.

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA

Defendant - Appellee

- -

Appeals from the Untied States District Court for the Eastern District of Louisiana, New Orleans

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ON PETITION FOR REHEARING

Before DAVIS, BENAVIDES and STEWART, Circuit Judges.

PER CURIAM

IT IS ORDERED that the petition for rehearing is DENIED.

ENTERED FOR THE COURT:

/s/ Carl E. Stewart
United States Circuit Judge